C Johnson ex rel Johnson v. Fridley Public Schools
D.Minn.,2002.
Only the Westlaw citation is currently available.
United States District Court, D. Minnesota.
Leigh E. JOHNSON, by and through her parents, Cynthia M. Johnson and David S. Johnson, Plaintiffs,
v.
FRIDLEY PUBLIC SCHOOLS, Independent School District No. 14, the Fridley Board of Education, Greg Rosholt, Chair, and MaryAnn Nelson, Superintendent, in their representative capacities, Defendants.
No. CIV. 01-1219(PAM/JGL.

Feb. 21, 2002.

MEMORANDUM AND ORDER

MAGNUSON, District Court J.
***1** Plaintiffs are seeking attorney's fees for work related to a complaint filed under the complaint resolution procedures ("CRP") of the Individuals with Disabilities in Education Act ("IDEA"), 20 U.S.C. § 1400*et seq*. This matter is before the Court on Defendants' Motion for Summary Judgment. For the following reasons, the Court grants Defendants' Motion.

BACKGROUND

Because Plaintiffs have conceded that there is no genuine dispute over the material facts in this case, a brief summary of the salient facts is sufficient. Plaintiffs are the parents of Leigh Johnson, a disabled child. In 1999, Plaintiffs filed a complaint with the Minnesota Department of Children, Families, and Learning ("MDCFL"), pursuant to Minnesota's CPR. Plaintiffs alleged that Defendants Fridley Public Schools, Independent School District No. 14, the Fridley Board of Education, Greg Rosholt, the Chairperson of the Board, and MaryAnn Nelson, the Superintendent (collectively referred to as "the District") violated the IDEA by failing to properly provide special education services to their daughter. The MDCFL investigated the Complaint and found several violations of the IDEA. Accordingly, in August 1999, the MDCFL ordered the District to take certain corrective actions.

According to Plaintiffs, the parties met twice in September 1999, but the District refused to comply with the MDCFL order. On November 15, 1999, Plaintiffs retained their current counsel who claims to have spent 55.3 hours between November 15, 1999, and June 5, 2001, in efforts to enforce Plaintiffs' special education rights and implement the MDCFL order.

The District puts a different spin on these same basic facts. The District claims that by November 1999, it had complied with all but two of the requirements of the MDCFL order. According to the District, however, it had taken substantial and voluntary strides towards meeting the remaining requirements.

In any event, Plaintiffs concede that all of their claims were ultimately resolved by a final order of the MDCFL dated June 6, 2001, incorporating the agreement of the parties on various matters. In order to survive summary judgment, Plaintiffs must establish that their efforts to enforce their rights under the CRP constitute an "action or proceeding" for purposes of the attorney's fees provision of the IDEA. Because they cannot do this, Plaintiffs' claim fails as a matter of law.

DISCUSSION

A. Summary Judgment Standard

Summary judgment is only proper if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law.Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986); *Unigroup, Inc. v. O'Rourke Storage & Transfer Co.,* 980 F.2d 1217, 1219-20 (8th Cir.1992). The Court must view the evidence and the inferences that may be reasonably drawn from the evidence in the light most favorable to the nonmoving party. *Enter. Bank v. Magna Bank,* 92 F.3d 743, 747 (8th Cir.1996).

***2** The moving party bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.*Id.* The nonmoving party must demonstrate the existence of specific facts in the record that create a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Krenik v. County of Le Sueur*, 47 F.3d 953, 957 (8th Cir.1995). A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials and must do more than simply show that there is some metaphysical doubt as to the material facts.*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

B. Action or Proceeding

Two " 'separate, distinct, and independent remedies [are] available to children with disabilities and their parents to resolve issues of disagreement with local school districts regarding the implementation of the requirements set forth in the IDEA."*Megan C. v. Indep. Sch. Dist. No. 625*, 57 F.Supp.2d 776, 780 (D.Minn.1999) (Davis, J.). First, the IDEA itself provides for an "impartial due process hearing," 20 U.S.C. § 1415(f)(1), which includes the right to counsel, the right to present evidence, and the right to present, confront, and compel the attendance of witnesses. *See*20 U.S.C. § 1415(h). Second, parents can file a complaint pursuant to a state's CRP. Unlike the due process hearing system, the CRP is described only in 34 C.F.R. §§ 300.660-.662.

If a parent or guardian obtains affirmative relief in an action or proceeding brought under the IDEA, "the court,. in its discretion, may award reasonable attorney's fees as part of the costs to the parents of a child with a disability who is the prevailing party."20 U.S.C. § 1415(i)(3)(B); 34 C.F.R. § 300.515. The dispute in this case centers on whether a complaint filed pursuant to a CRP is an "action or proceeding" that entitles prevailing parents to attorney's fees.

The District relies extensively on *Megan C.* and argues that the court in that case, after engaging in a thorough analysis of the IDEA's text and regulations, properly concluded that a complaint initiated under a CRP does not constitute an "action or proceeding" for the purposes of awarding attorney's fees under the IDEA. Doing little more than perfunctorily cataloging several disagreements with the reasoning of *Megan C.*, Plaintiffs propose that this Court disregard *Megan C.* and look to a more recent decision of the Ninth Circuit holding that attorney's fees are available for complaints filed pursuant to a CRP. *See* *Lucht v. Molalla River Sch. Dist.*, 225 F.3d 1023 (9th Cir.2000).

In *Megan C.*, the court rested a good deal of its reasoning on the fact that section 1415(i)(3), providing attorney's fees to a prevailing party, specifically states that it only applies to actions or proceedings brought under section 1415. Prior to 1997, section 1415(b) stated that "[t]he procedures required by this section shall include, but shall not be limited to" a due process hearing, an appeal to a State Education Agency, an appeal to a court, and the opportunity to resolve the matter through mediation. In 1997, 1415(b) was amended to remove the language "but shall not be limited to."According to the *Megan C.* court, this deletion signaled the clear intent of Congress to contract the right to recover attorneys' fees under the Act. *See* *Megan C.*, 57 F.Supp.2d at 784-85.

***3** The court buttressed this conclusion by noting that the implementing regulations establishing the CRP fail to provide the mandatory procedural protections required for a due process hearing. These protections include the right to be accompanied and advised by counsel, the right to confront, cross-examine, and compel the attendance of witnesses, and the right to an appeal. The absence of these procedural safeguards, the court held, "further supports the proposition that a complaint initiated under the CRP is not an 'action or proceeding' brought under § 1415."*Id.* at 785.

The court in *Megan C.* concluded by considering the policies behind the due process hearing and the CRP. It stated that

> the purpose of the CRP is to provide a 'free service' through which parents can seek enforcement of the IDEA without engaging in the adversarial process and incurring the corresponding fees of 'costly legal action.' ...The more amicable and informal purpose of the CRP is facilitated by the role of the [State Educational Agency] ... which acts as an impartial investigator, negating the need for each individual party to conduct discovery, investigation, and research and thereby precluding the need for retention of counsel to perform such tasks.

Id. at 791.In light of these policy considerations, the court found that allowing plaintiffs to "recover[ ] ... attorneys' fees and costs under the CRP would contravene the ... purposes of the CRP to provide an economical and non-adversarial complaint resolution process."*Id.*

The Ninth Circuit in *Lucht* did not address or even mention *Megan C.* Nevertheless, in diametric opposition to the reasoning in *Megan C.,* the Ninth Circuit determined that "[h]ad Congress intended that attorney fees be available only in those cases involving an impartial due process hearing under § 1415(f), it could have and would have written the statute more narrowly to say so."*Lucht,* 225 F.3d at 1027. To reach this conclusion, the Ninth Circuit made much of the fact that section 1415(i)(3)(B) states that "[i]n any action or proceeding under this section" attorneys' fees may be awarded to the prevailing party. "Congress' use of the word 'any' is significant, because it suggests that there is more than one type of 'proceeding' in which a district court is authorized to award attorneys.'" *Lucht,* 225 F.3d at 1027.

This Court disagrees. Although Congress' use of the word "any" in section 1415(i)(3)(B) certainly could mean that Congress intended that the award of attorneys' fees be available in a broad range of procedures under the Act, Congress' elimination of the phrase "including but not limited to" cuts against such a reading. Additionally, as the court in *Megan C.* noted, there is an important policy distinction between the CRP and due process hearings under the Act. If attorney's fees were available in both processes, defendants, exposed to an equal risk under either system, would likely demand the procedural safeguards of a due process hearing, thereby undermining the value of the CRP. Accordingly, the Court finds that Plaintiffs are not entitled to attorney's fees under the IDEA.

CONCLUSION

***4** Persuaded by the sound reasoning of Judge Davis in *Megan C.,* the Court holds that Plaintiffs' complaint under the CRP is not an "action or proceeding" for the purposes of awarding attorney's fees under the IDEA. Accordingly, for the foregoing reasons, and upon all the files, records, and proceedings herein, IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (Clerk Doc. No. 11) is GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

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Not Reported in F.Supp.2d, 2002 WL 334403 (D.Minn.)

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